Wednesday, December 8, 1999
DO NOT PUBLISH

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF CALIFORNIA

In re:
Jointly Administered for Procedural Purposes Only Under
No. 97-3-3694-TC
Chapter 11

GUY F. ATKINSON COMPANY OF
CALIFORNIA, a Delaware corporation,

GUY F. ATKINSON COMPANY, a Nevada
corporation; and

GUY F. ATKINSON HOLDINGS, LTD.,
a Canadian federal corporation,
Debtors.
_____/

MEMORANDUM RE EQUIPMENT RENT

The court held a trial on September 8-9, 1999, to determine the compensation that a surety completing bonded construction projects should be required to pay to certain banks for the use of equipment and inventory in which those banks have a senior lien. G. Larry Engel, David J. Brown and Kristin E. Caverly appeared for Wells Fargo Bank, N.A., as Agent for Itself, Bear Stearns & Co., and Cerberus Partners, L.P. (the Banks). Adam A. Lewis, Cedric C. Chao, Filiberto Agusti, and Richard K. Willard appeared for Fidelity and Deposit Company of Maryland, and the American International Group of Companies (the Bonding Companies).

BACKGROUND

Debtors are heavy construction companies specializing in large-scale projects, such as roads, bridges, power plants, and dams. The Bonding Companies issued surety bonds on many of Debtors' projects. The Banks made prepetition loans to Debtors secured by liens on the equipment, inventory, and works in progress at the bonded projects (the Equipment).

Debtors obtained three postpetition loans from the Bonding Companies to enable Debtors to continue their operations. The first such loan was secured by a lien on the Equipment senior to the prior lien of the Banks. This court has determined that the first loan has been repaid, and the District Court upheld that determination on appeal. The orders authorizing the second and third loans provide expressly that the Banks retain senior liens in all of the Equipment.

When it became apparent that Debtors could not successfully reorganize, the court granted the Bonding Companies permission to take over and complete the bonded projects, and to use the Equipment for that purpose. The Bonding Companies took over all the bonded projects on February 1, 1998 (the Takeover Date). Upon motion of the Banks, the court later determined that the Bank's security interest in the Equipment was superior to the equitable subrogation rights of the Bonding Companies. See State Bank & Trust Company v. Insurance Company of the West, 132 F.3d 203 (5th Cir. 1997). The court entered an order under which the Bonding Companies could continue to use the Equipment, but were required to compensate the Banks for that use (the Equipment Order). The Bonding Companies and the Banks disagree over the amount of compensation due under the Equipment Order.

DISCUSSION

A. TIME PERIOD FOR WHICH COMPENSATION IS REQUIRED

I determine that the Equipment Order requires the Bonding Companies to compensate the Banks for use of the Equipment only for the period that the Bonding Companies themselves used the Equipment after the Takeover Date.[(1)]

The plain language of the Equipment Order compels this conclusion. That order provides in relevant part:

[T]he Court has authorized the Bonding Companies to provisionally use the Bonded Project Equipment Collateral to complete the Bonded Projects. However, the Bonding Companies do

not own the Bonded Project Equipment Collateral. Accordingly, in order to take care that the Bonding Companies are not unjustly enriched by the use of the Bonded Project Equipment Collateral, the Bonding Companies need to provide the Debtors', [sic] subject to the Banks' security interest and the terms of this Order, with compensation for the past and future use and diminution of the Bonded Project Equipment Collateral. Therefore, the Bonding Companies shall pay to the Banks:

. . . the fair market rental value of the Bonded Project Equipment Collateral on account of the **Bonding Companies' use** of the Bonded Project Equipment Collateral after the Petition Date and before such determination by the court or sale of the equipment.

Equipment Order at § 7 (emphasis added). This language requires payment only for the Bonding Companies' use of the Equipment. It is not disputed that the Bonding Companies did not obtain possession of the Equipment until they took over the bonded projects, and they thus did not "use" the Equipment in the normal sense of the word before that date. Nothing in the Equipment Order overrides the usual meaning of "use" or deems the Bonding Companies' use of the Equipment to start on the petition date.

The limited purpose of the Equipment Order reinforces the conclusion that the Bonding Companies are required to pay only for their use of equipment after the Takeover Date. The Banks were awarded the payments in lieu of being allowed to seize the Equipment on the Takeover Date. To interpret the Equipment Order to require compensation for Debtors' use of the equipment before that date would be to expand the effect of the order beyond the situation it was intended to remedy.

The Banks contend that it is law of the case that the Bonding Companies' obligation to pay arises from the petition date, because the Bonding Companies appealed from the Equipment Order, contending that this court erred in requiring payments from the petition date. This argument is unpersuasive. The Bonding Companies effectively dropped this argument from their appeal and the District Court did not address the issue on the merits. As a result, the District Court did not decide whether the Equipment Order requires payments from the petition date. Because neither this court nor the District Court has previously interpreted the Equipment Order, there is no law of the case on the issue presently before this court.

B. RECOUPMENT

The Bonding Companies argue that they have recoupment rights that defeat all claims of the Banks. Specifically, the Bonding Companies assert that they should be entitled to recoup the indemnity payments owed by Debtors against the rent payments owed by the Bonding Companies. The Bonding Companies rely on the decision of the Ninth Circuit in Newbery Corp. v. Fireman's Fund Ins. Co., 95 F.3d 1392 (9th Cir. 1996). The court rejected this argument at trial, and excluded evidence offered by the Bonding Companies. The court offers the following explanation for that ruling.

The facts of Newbery are as follows. Debtor Newbery was a subcontractor on a construction project. Fireman's Fund issued payment and performance bonds on Newbery's projects. Newbery agreed to indemnify Fireman's Fund against all losses sustained under the bonds.

Citibank had a perfected lien on Newbery's equipment. After Newbery defaulted, Fireman's Fund took over and completed the project using Newbery's equipment. Fireman's Fund agreed to pay rent to Citibank for use of Citibank's collateral. Newbery then filed a lender liability suit against Citibank. As part of the settlement of that suit, Citibank released its security interest in the equipment, and assigned to Newbery its claim to receive rent from Fireman's Fund, but took a security interest in the equipment rents due Newbery from Fireman's Fund. Newberry, 95 F.3d at 1397. The Ninth Circuit upheld the trial court decision allowing Fireman's Fund to recoup the indemnity payments due from Newbery against the amounts due to Newbery for use of its equipment.

Newbery is easily distinguishable from the present case. The decision acknowledged that "'recoupment cannot defeat the rights of a creditor who holds a properly perfected Article 9 security interest.'" Newberry, 95 F.3d at 1403 (quoting Native Am. Fin. Inc. v. Tecumseh Constr. Co. (In re Tecumseh Constr. Co.), 157 B.R. 471 (Bankr. E.D. Cal. 1993)). In Newbery, the court held that this limitation on recoupment did not apply, because Citicorp had released its security interest in the equipment, had assigned to Newbery its claim to receive rental fees from Fireman's Fund, and had retained a security interest only in the net amount Fireman's Fund owed Newbery. Id. at 1403-04. In the present case, the Banks did not release their security interests in the Equipment and did not assign to Debtors their rights to receive rental fees from the Bonding Companies. Thus, in the present case the Banks retain rights far different from the rights Citibank retained in the Newbery case.

Permitting recoupment in the present case would defy common sense and the equitable underpinning of the recoupment doctrine. At the time the Bonding Companies took over Debtors' bonded projects, they had no right to prevent the Banks from seizing the Equipment pursuant to the Banks' perfected security interest. This court prohibited the Banks from exercising their rights against their collateral only after ordering that the Bonding Companies pay the Banks the fair rental value of the Equipment. To allow the Bonding Companies to defeat the Banks' right to payment for use of the Equipment would wholly defeat rights that the Bank indubitably enjoyed at the time of the takeover, and that the Equipment Order was designed to preserve. Stated differently, the Bonding Companies seek through their recoupment claim to enjoy all the benefits of the Equipment Order while avoiding the burdens of that order. Recoupment is an equitable doctrine that should never be used to reach such an inequitable result.

C. VALUATIONS

The Equipment Order provides that the Bonding Companies shall pay fair market rent for the Equipment used, and that the rental value shall be determined by a "Special Evaluator." The Special Evaluator is to be an expert appraiser who is mutually acceptable to the parties or, if the parties are unable to agree, who is selected by the court from nominees submitted by the parties. Either party may challenge the findings of the Special Evaluator before the court. Mr. Jeffrey Hutton of Arthur Anderson, LLP was selected by the parties as the Special Evaluator, and was appointed by the court on September 28, 1998. He submitted his written report on July 12, 1999.

1. Large Equipment. The Special Evaluator submitted a determination of fair market rental

value only for certain large equipment, including earth moving equipment, trailers, vehicles, etc. (the Large Equipment).[(2)] The Special Evaluator determined the rental value for the Bonding Companies use of the Large Equipment from the Takeover Date to June 30, 1999 to be $2,912,899, before prejudgment interest. The Bonding Companies contend that the Special Evaluator's determination of rent due should be adjusted downward for the following reasons.

First, the Bonding Companies contend that the rental value found by the Special Evaluator should be reduced with respect to Equipment more than seven years old. The Bonding Companies' expert witness, Edward G. Barker, testified that rental companies generally do not rent equipment more than seven years old, that the Special Evaluator's reliance on market comparables is inappropriate, and that court should adopt Mr. Barker's rate-of-return analysis as the rental value of the older equipment. I find the Bonding Companies' evidence on this issue unpersuasive. The evidence does not support the contention that rental companies do not rent equipment more than seven years old. The evidence also indicates that the Special Evaluator took the age of the Large Equipment into account when determining fair market rental value, and that the Special Evaluator used a rate-of-return analysis to check his analysis of market comparables. See Special Evaluator's Report at 22. Finally, Mr. Barker's rate-of-return analysis contained numerous errors that diminish its persuasive value.

Second, the Bonding Companies contend that the rental value determined by the Special Evaluator should be reduced by 7.5 percent because of the large volume of equipment used. Mr. Barker testified that rental companies provide volume discounts of up to 10 percent. The Special Evaluator's report considered but declined to apply a volume discount. "We understand that FMRV's are often discounted based on volume (unit quantity) rentals. The subject assets were available for various periods and at various projects. In some cases, the subject assets were available for multiple projects. As a result, we made no adjustments for volume discounts." Special Evaluator's Report at 22. At trial, the Special Evaluator again acknowledged that rental companies provide volume discounts, but again explained that the Bonding Companies would not qualify for any such discount because the assets were scattered among so many projects. I find the Bonding Companies' argument persuasive. The Special Evaluator assumes that equipment rented by the Bonding Companies for different projects would not be aggregated for this purpose. The present case is like that of a single large rental company operating from several locations (the Banks) renting to a single large customer renting from several of the rental company's locations (the Bonding Companies). It is more likely than not that such a customer would be able to negotiate a substantial volume discount. I therefore determine that the Special Evaluator's determination of fair market rental value should be reduced by 7.5 percent.

Third, the Bonding Companies contend that the rental values determined by the Special Evaluator should be reduced to take account of discounts available for long-term rentals. Mr. Barker testified that the bulk of the Large Equipment was rented for 18 months, and that rental companies provide discounts up to ten percent for rentals longer than six months. This argument is unpersuasive. The Special Evaluator already took into account the 18-month rental period in making his determination of fair market rental value. See Special Evaluator's Report at 22.

The Banks assert that the Special Evaluator's determination should be adjusted upward to take account of usage periods that the Special Evaluator erroneously failed to take account of. The Banks and Bonding Companies disagree as to how much the Special Evaluator understated the usage periods. I find that the Banks' expert, Robert J. Stall, accurately identified the additional usage periods and used the correct fair market rental value for those usage periods. The Special Evaluator's determination shall be adjusted upward by $481,440.[3]

The Banks and the Bonding Companies agree that the special Evaluator erroneously failed to value certain Large Equipment, because the Special Evaluator believed that equipment was leased, rather than owned by Debtors. The parties disagree, however, over the fair market rental value for the omitted Large Equipment. I find that the Banks' expert, Mr. Stall, correctly determined the rental usage period and rental value of the excluded Large Equipment, and that $522,809[4] should be added to the rental value of the Large Equipment found by the Special Evaluator.

The Banks acknowledge that the determination of the Special Evaluator should be reduced by $618,116, because the Banks did not have a perfected security interest in certain vehicles included in the Special Evaluator's determination.

The fair rental value of the Large Equipment without prejudgment interest is calculated as follows.[5]

1. Special Evaluator's determination.....$2,912,899

2. Additional usage periods.....481,440

3. Erroneously omitted equipment.....522,804

4. Erroneously included vehicles.....(618,116)

5. Volume discount (7.5 percent of lines 1-4) (247,427)

Amount due.....$3,051,605

2. Small Equipment and Tools. The Special Evaluator determined that he did not have enough information to state a professional opinion regarding the value of small equipment and tools at the bonded projects on the Takeover Date. The Bonding Companies' expert, Mr. Barker, agreed that there is insufficient information to value the small equipment and tools. Mr. Barker also stated that if the court concluded otherwise, it should set the value at not more than $1,509,795. The Banks' expert witness, Mark A. Smith, testified that there was sufficient information to value the small equipment and tools, and that this equipment had a value of $3,469,634 as of the Takeover Date.

I find that the small equipment and tools can be valued, and that Mr. Smith's testimony regarding their value is persuasive in all respects save one. In determining the value of the

small equipment and tools from Debtors' "Black Book," Mr. Smith used the acquisition cost listed, rather than the Debtors' more recent estimates of fair market value. His report stated that he used the book value figures on the basis of the following language in the Equipment Order.

The Special Evaluator shall base the compensation to be paid by the Bonding Companies for the use of supplies, inventory and works in progress upon the greater of (i) its book value (calculated on a FIFO basis), or (ii) its value as of the Petition Date, as such value would be determined between two parties dealing at arms-length under non-distress circumstances.

Equipment Order, § 9(d). This provision was intended to apply only to supplies, inventory, and works in progress, not to equipment and tools. It is appropriate to use book value for materials, because such materials have not been previously used, and because book value accurately represents the value of the materials to the completing surety. Compensation for use of the small equipment and tools should take account of the fact that some of the tools may have been used before and therefore will have diminished in value. Thus, it should be based on fair market rental value or the diminution in value resulting from use. In light of the fact that neither party submitted evidence regarding rental value, the best available measure of compensation for previously used tools is the value on the Takeover Date (calculated from the then fair market value or some other measure that reflects accumulated depreciation) less the proceeds received by the Banks upon sale.

I determine that the value of the small equipment, tools, and other nonconsumables as of the Takeover Date was $2,264,769. This amount is derived from Mr. Smith's report by substituting the fair market value entries from the Black Book for the book value entries from the Black Book. For the two projects for which Mr. Smith reports no fair market value data, fair market value is calculated as 45 percent of the book value. This percentage was calculated by dividing the aggregate fair market value for the other projects by the aggregate book value for those projects. I find no reason to divert from Mr. Smith's analysis regarding tools purchased postpetition or expense deferrals.

Small Equipment and other Nonconsumables on hand as of January 31, 1998

	Smith Report	Court Findings
Black Book		
Chian Basin	$ 218,600	$ 80,849
Belleville	1,434,527	592,472
Mingo Junction	39,168	19,737
Stony Brook	99,586	47,890
UCSF	52,232	23,504
NW Bonded	582,155	582,155
Buck Center	40,264	18,350
Uconn	199,866	96,576

Purchases	412,694	412,694
Deferred Amounts	390,542	390,542
TOTAL	$3,469,634	$2,264,769

I do not have enough information to determine the proceeds paid to the Banks from sale of the small equipment, tools, and other nonconsumables.[(6)] The Banks' expert witness testified that such proceeds total $170,613. The Bonding Companies' expert testified that such proceeds total $773,435. The parties are directed to submit a further accounting regarding this matter pursuant to the Part E(2) of this decision.

3. Consumable Materials on Hand. The Special Evaluator declined to state a professional opinion regarding the value of supplies, inventory, and works in progress, stating that he had insufficient information to do so. Edward Barker, testifying for the Bonding Companies, stated summarily, "I concur with the conclusion in the Special Evaluator's report that because of insufficient data it is not possible to render an opinion as to the value of inventory, supplies, and works in progress used on the Bonded Projects between August 10, 1997 and June 30, 1999." Declaration of Edward G. Barker, § 13. Mark Smith testified for the Banks that he discovered information not available to the Special Evaluator, and that such information was sufficient to determine the value of materials on hand. He determined that materials on hand on the bonded projects had a book value of $3,581,193 as of the Takeover Date.

I credit fully Mr. Smith's expert testimony regarding the value of unused materials on hand as of the Takeover Date. He correctly determined that there was credible evidence from which the value of the materials on hand could be determined. His method of evaluating that evidence was appropriate and was fully explained. He corroborated his conclusions through various cross checks. The Bonding Companies ask this court to reject Mr. Smith's testimony without offering any alternative valuation. It is obvious from the size, nature, and status of the bonded projects that unused materials with significant value were on hand on the Takeover Date. Given the certainty that the Bonding Companies received property of significant value, this court should make every effort to determine that value. Mr. Smith's testimony clearly meets the minimum standards of credibility, and even more clearly represents the most persuasive testimony presented to the court on this subject.

I find more persuasive the Bonding Companies' argument that they should not be required to pay the Banks for materials delivered to Debtors before the Takeover Date that the Bonding Companies later paid for. Mr. Smith testified that Debtors made purchases of additional materials totaling $8,425,595 between the petition date and the Takeover Date, of which $1,574,077 were paid for by the Bonding Companies after the takeover of the bonded projects. The Banks argue that it is irrelevant whether the purchase price was paid before the Takeover Date, because they acquired a security interest in the property as soon as it was delivered to Debtors. I determine that it is appropriate for the Bonding Companies to deduct the amount they paid for materials delivered pre-takeover, whether or not the Banks obtained a security interest upon delivery. In determining what the Bonding Companies should pay for materials on hand, the court is applying an unjust enrichment test. It is only under this approach, which looks at the question from the Bonding Companies' viewpoint, that the materials on hand can properly be valued according to their acquisition cost. The

Bonding Companies are clearly not unjustly enriched by receiving materials they pay for. The Banks do no better by viewing the question from the perspective of what they could seize and sell. In determining what the Banks would realize from that course of action, one would have to assign the materials a liquidation value. There can be little doubt that the Banks are as well off receiving payment of $2,007,116 for the book value of the materials as they are receiving payment for the liquidation value of materials originally costing $3,581,193.

The Banks are entitled to recover $2,007,116 for materials on hand on the Takeover Date before prejudgment interest.[7]

D. CHINA BASIN

The Bonding Companies argue that the rental value for the Equipment should not include the amount attributable to the Equipment used on the China Basin project. This argument is based on this court's statement at a hearing on July 23, 1999, at which time the court indicated that the rental payments due the Banks for the China Basin project could be recovered through the Bank's receipt of the surplus proceeds from that project.

The Bonding Companies' argument is unpersuasive because the underlying premise for the court's comments no longer exists. At the time of the July 23 hearing, the court assumed that the surplus for China Basin project would be paid to the Banks. It thus did not matter to the Banks whether some of the money they received was characterized as payment for use of the Equipment, because that characterization would not affect the amount of money the Banks received. The parties agree that one of the appellate decisions of the district court in this case has had the effect of allowing the Bonding Companies to offset a surplus earned on one bonded project against losses incurred on other bonded projects. As a result, it is unlikely that the Banks will be paid the surplus from the China Basin project. It has thus become important to treat the payments for use of the China Basin equipment as project expenses to be paid to the Banks irrespective of whether the China Basin project runs a surplus.

E. PREJUDGMENT INTEREST

1. Interest Rate. The Special Evaluator's determination includes prejudgment interest at the rate of 10 percent per annum. The Bonding Companies do not object to the imposition of prejudgment interest, but contend that the rate should be 6 percent. The Banks contend that prejudgment interest should be imposed at the rate of 11.5 percent.

The Ninth Circuit has held that a federal court should calculate prejudgment interest at the postjudgment interest rate fixed by 28 U.S.C. § 1961, "unless the trial judge finds, on substantial evidence, that the equities of the particular case require a different rate." Western Pacific Fisheries, Inc. v. S.S. President Grant, 730 F.2d 1280, 1289 (9th Cir. 1984). Accord MHC, Inc. v. Oregon Dept. of Revenue, 66 F.3d 1082, 1090-91 (9th Cir. 1995); Nelson v. EG & G Measurements Group, Inc., 37 F.3d 1384, 1391-92 (9th Cir. 1994). In a diversity action governed by state law, however, a federal court is to apply the rate for prejudgment interest fixed by state law. Northrop Corp. v. Triad International Marketing S.A., 842 F.2d 1154, 1155 (9th Cir. 1988).
I determine that the unique circumstances of the present case justify awarding prejudgment

interest at the rate of ten percent per annum. Through the Equipment Order, this court in substance imposed a contractual obligation on the Bonding Companies to pay rent to the Banks. To avoid unjust enrichment of the Bonding Companies, and to provide compensation for use of the Banks' property, the Equipment Order required the Bonding Companies to pay the Banks fair market rent as a condition of using the Equipment. The court relied upon state law in determining that the Banks otherwise had a right to seize and sell the Equipment pursuant to their perfected personal property security interests. The court also relied upon traditional state-law concepts of unjust enrichment and implied-by-law contracts in requiring the Bonding Companies to pay rent. Because the most important rights at issue arise under state law, and because the present controversy is closely analogous to a breach of contract action, it is appropriate to impose prejudgment interest at the ten percent rate specified for breach of contract damages in California Civil Code § 3289. See Northrop, 842 F.2d at 1155 (9th Cir. 1998).

2. Calculation of Interest Due. The court has sufficient information to calculate prejudgment interest on the amount due for the large equipment. The total amount due including prejudgment interest through June 30, 1999, is the "total payment 2/1/98 to 6/30/99" calculated by Mr. Stall reduced by the 7.5 percent volume discount imposed by the court. That amount equals $3,239,589. To that amount is added per diem interest for each day between June 30, 1999 and entry of judgment. That per diem amount is calculated by reducing Mr. Stall's calculation of "base rent 2/1/98 to end date" by the 7.5 percent volume discount, and by then multiplying that amount by the daily interest rate. So calculated, per diem prejudgment interest is $836.06.

The court also has sufficient information to calculate prejudgment interest on the amount due for consumables. The Bonding Companies shall pay interest from the Takeover Date on $2,007,116, the amount by which the consumables on hand on the Takeover Date exceed the payments to vendors made by the Bonding Companies. Prejudgment interest on $2,007,116 from the Takeover Date to June 30, 1999 totals $282,646, and accrues at $549.89 per diem from June 30, 1999 to entry of judgment.

The court does not have enough information to determine prejudgment interest on the amount due for small equipment and tools. This is so because the amounts received by the Banks upon sale reduce the principal amount due the Banks. As noted in Part C(2), the court does not have complete information regarding either the date or amount of sale proceeds paid to the Banks for small equipment and tools. The court shall hold a status conference regarding the question on November 22, 1999 at 1:00 p.m.

F. EVIDENTIARY OBJECTIONS

The written evidentiary objections filed by the Banks are overruled.

CONCLUSION

The Bonding Companies shall pay to the Banks the following sums pursuant to the Equipment Order: (1) for the large equipment, $3,239,589 plus prejudgment interest of $836.06 per day from June 30, 1999 to judgment; (2) for the small equipment and tools, $2,264,769 plus

prejudgment interest to be determined; and (3) for consumables, $2,289,762 plus prejudgment interest of $549.89 per day from June 30, 1999 to judgment. Judgment will not be entered on any claim until prejudgment interest on the small equipment and tools claim is determined.

Dated: _____

_____

Thomas E. Carlson

United States Bankruptcy Judge

1. I do not decide at this time whether the Banks, either directly or through Debtors via their security interests, have a claim against the Bonding Companies based on a theory other than the Equipment Order for any benefit conferred upon the Bonding Companies as a result of Debtors' postpetition, pre-takeover use of the Equipment.

2. Assets for which the Special Evaluator did not submit a determination of value are discussed in subparts 2 and 3, infra.

3. Before the 7.5 percent volume discount and before prejudgment interest.

4. Before the 7.5 percent volume discount and before prejudgment interest.

5. It is not necessary to determine the amount paid to the Banks from sale of the large equipment and credit that amount against the equipment rent due. Under a fair market rental approach, the Banks are entitled to fair market rent plus recovery of the salvage value of the equipment at the end of the rental period.

6. It is necessary to determine the sales proceeds for small tools received by the Banks, because the measure of compensation is diminution in value, calculated as value of the Takeover Date less salvage value received.

7. The amounts paid by the Bonding Companies for pretakeover purchases may have included some payments for small tools. That would not affect the result in any way. The Bonding Companies would still be entitled to a credit. The credit would still equal the full purchase price paid, because the postpetition purchases of small tools were calculated in Part B(2) on the basis of acquisition cost.